

NINTH CIRCUIT CIVICS CONTEST

The Right to Vote: MILESTONE ANNIVERSARIES

In the wake of the 15th and 19th Amendments, barriers remained to prevent United States citizens from voting.

Do formal or informal barriers remain today?

What additional changes would you make, if any, to Americans' voting rights?

An illustration of a hand dropping a ballot into a ballot box. The hand is stylized with a rainbow gradient, transitioning from dark red at the wrist to yellow at the fingers. The ballot is white with a series of black rectangular boxes for marking, and a red checkmark is visible in one of the boxes. The ballot box is a simple white cube with a rectangular opening on top. The background is a light blue textured surface.

2020 CONTEST WINNERS

A Word About the Contest

The 2020 Ninth Circuit Civics Contest is a circuit-wide essay and video competition for high school students. The contest focused on the 150th anniversary of the 15th Amendment, which granted voting rights to persons of color, and the centennial of the 19th Amendment, which accorded those same rights to women. The goal is to inform young people about their constitutional rights in order to help them become knowledgeable citizens while giving them a chance to express themselves in a creative manner by writing an essay and/or producing a video.



*District Judge Janis L.
Sammartino,
Chair of the Ninth Circuit Public
Information and Community
Outreach*

Now in its fifth year, the contest is organized by the Ninth Circuit's Public Information and Community Outreach (PICO) Committee in collaboration with all of the federal courts in the circuit.

The theme of the 2020 contest was "The Right to Vote: Milestone Anniversaries." Students were challenged to write an essay or produce a short video with the questions presented: *"In the wake of the 15th and 19th Amendments, barriers remained to prevent United States citizens from voting. Do formal or informal barriers remain today? What additional changes would you make, if any, to Americans' voting rights?"*

The contest was open to young people in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington, along with the United States Territory of Guam and the Commonwealth of the Northern Mariana Islands. The 2020 Civics Contest was uniquely challenged because of the unprecedented Coronavirus that forced a world-wide "Shelter in Place" to counteract the world-wide pandemic. Distance learning programs throughout the Circuit's high schools became the new "normal." We are proud to report that nearly 1,000 essays and over 80 videos were submitted by students from across the circuit. Preliminary judging done at the district level narrowed the field to 38 essays and 27 videos. Final judging was completed by members of the PICO Committee and court executives, which selected the top three finishers in each competition.

We would like to thank all of the federal courts of the Ninth Circuit for their support of the contest. We could not have succeeded without the help of the many judges, lawyers, chambers staff, court and library staff from throughout the circuit who contributed their time.

July 2020

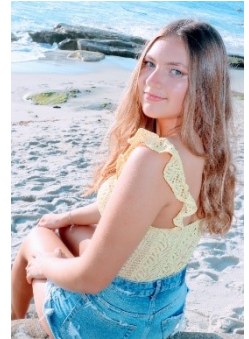
First Place



Danielle Amir-Lobel
La Jolla Country Day School – Grade 12

The Facially Neutral Rules that Disenfranchise Our Most Vulnerable

The anniversaries of the 15th and 19th Amendments are reasons to celebrate, but there still remain barriers to full voting equality. Today, surveys are alarmingly finding that only half of Americans believe voting is conducted openly and fairly. The growing mistrust in our electoral system stems from decades of disenfranchisement of some of the country's most vulnerable populations. While the 15th Amendment makes it unlawful to "deny" or "abridge" the right to vote "on account of race, color, or previous condition of servitude," many contemporary voting rules have disparate impact on people of color. In 1965, Congress used its powers to enforce the constitutional amendments by enacting the Voting Rights Act (VRA) which prohibited using a "test or device" to deny voting rights and banned practices such as poll taxes and literacy tests. In *Harper v. Virginia Board of Elections* (1966), the Supreme Court extended the ban on poll tax to state elections explaining that "wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process." According to the Library of Congress, within four years of the VRA's enactment, black voter registration rates increased from 35 percent to 65 percent. Still, even decades later, minority voting has not yet risen to full equality and several recent cases represent a retreat from the progress that was made since the 1960s.



Reforms that increase voting requirements, manipulate voting zones, and disenfranchise certain populations often disproportionately harm those who have historically been excluded. One of the most pressing issues today is felony disenfranchisement. Felony disenfranchisement laws have denied the basic right to vote for over six million citizens in recent years. A third of these citizens are not incarcerated but live in the majority of states which have laws prohibiting voting by those on parole, probation, or who have served their sentence, even if convicted for a relatively small one-time offense. Continuing disparities in wealth and education as well as ongoing racial biases have led to stronger law enforcement and criminal prosecution against African Americans. Therefore, disenfranchised felons or former felons are disproportionately people of color, which, in my opinion, violates the 15th Amendment.

The courts, however, have been reluctant to adopt this expansive interpretation. In 2010, the Ninth Circuit Court of Appeals struck down Washington State's felony disenfranchisement, finding that racial discrimination in Washington's criminal justice system in turn causes racial discrimination in voting rights. The victory was short lived. The holding was reversed in an en banc rehearing. Still, recent state legislative reforms are promising and should be emulated. Notably, Florida's Amendment 4 ended lifetime disenfranchisement for most residents, Colorado passed a law expanding voting rights to residents on parole, and Nevada and New Jersey enacted laws restoring voting rights for anyone released from prison.

Even beyond disenfranchisement, a major impediment to full democratic participation is low political participation among those who have been historically marginalized. In other words, even when, for example, a state passes a felony disenfranchisement reform, more needs to be done bring these newly enfranchised citizens to the ballot. Educational programs to increase the number of actual voters are therefore no less important than the removal of formal barriers. California has a proactive initiative, A New Way of Life Reentry Project, promoting voter engagement of women who are released from prison. This effort is important to fulfill the mandates of both the 15th Amendment and the 19th Amendment. Similar initiatives include Louisiana's Voice of the Experienced (VOTE)

and Maine's NAACP State Prison chapter, which educates incarcerated voters about the political questions of the day.

Voter suppression has also taken the form of reforms such as ID requirements, cutting voting time, limiting voting locations, redistricting, registration requirements, and limits on mail in ballots which disproportionately suppress voting by minorities and the poor. While the VRA increased minority participation immediately after its enactment, recent decisions reveal a reluctance by the courts to intervene in voting reforms. In 2013, *Shelby County v. Holder* vacated the sections of the VRA that required federal approval of voting restrictions. Chief Justice Roberts wrote the majority opinion, holding that the law undermined "the fundamental principle of equal sovereignty" among the states. According to the Chief Justice, minority voting has seen "dramatic progress" and therefore supervision is no longer needed. Justice Ginsburg strongly dissented, writing that "the Court makes no genuine attempt to engage with the massive legislative record that Congress assembled. Instead, it relies on increases in voter registration and turnout as if that were the whole story. One would expect more from an opinion striking at the heart of the Nation's signal piece of civil-rights legislation."

In 2018, the Supreme Court in *Husted v. A. Philip Randolph Institute* upheld Ohio's voter purge law, which allowed the state to disenfranchise voters if they did not vote in three consecutive elections. Ohio purged over two million voters from the rolls since 2011, with black voters over twice as likely to be purged as white voters. As Justice Sotomayor explained in her dissent, "language-access problems, mail delivery issues, inflexible work issues, among other obstacles, make it more difficult for many minority, low-income, disabled, homeless, and veteran voters to cast a ballot or return a notice, rendering them particularly vulnerable to unwarranted removal." These recent cases have moved away from the spirit of the 15th and 19th Amendments. In 1966, in *South Carolina v. Katzenbach*, the Court emphasized the importance of ongoing judicial intervention to prevent election manipulation and disenfranchisement. This need for judicial oversight continues today. Left to their own devices, political parties continue to reform voting processes to deliberately impact political outcomes. Democracy is based on checks and balances, and the judiciary is charged with the apolitical role of protecting access for everyone. Courts must continue to recognize that facially neutral rules can be discriminatory. To protect our democratic process, the American electorate must reflect who we all are regardless of race, gender, class, background, history, or privilege.

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Second Place



Yubeen (Amy) Cho
La Jolla Country Day School – 11th Grade

The Neverending Journey Toward Equal Suffrage

Different scenes and images are swirling around me, as if I were watching a film at double the speed. I observe Martin Luther King atop the Lincoln Memorial, advocating for his dream of racial equality as his voice booms across the sea of some 250,000 faces. The picture then morphs into the distinct figure of Susan B. Anthony fighting for women's rights, and finally to the present, in which I can still discern barriers that prevent U.S. citizens from voting.

Although voting and the path to democracy started in 1788 with the establishment of the Electoral College and President Washington, race and gender requirements were not formally addressed until after the Civil War ended in 1865. Five years later, Congress passed the 15th Amendment, providing that the right to vote could not be denied on "account of race, color, or previous condition of servitude." Nevertheless, numerous state governments targeted minority voters based on race and ethnicity, imposing obstacles to their voting rights through literacy tests and registration fees. Since then, the U.S. court system, through a number of landmark decisions, has contributed to rectifying this injustice and ensuring the voting rights that many individuals possess in the present.



For instance, two 1966 cases helped reinforce the idea of equal protection by preserving the voting rights of U.S. citizens: *Harper v. Virginia Board of Elections* and *South Carolina v. Katzenbach*. In *Harper*, Annie Harper could not afford to pay \$1.50, Virginia's imposed poll tax, so she could not register to vote. The Supreme Court held that the poll tax violated the Equal Protection Clause, overturning a 1937 decision, *Breedlove v. Suttles*, which had upheld the state's power to impose poll taxes. *Harper* reinforced the idea that eligibility to vote did not and should not depend on an individual's wealth. In *Katzenbach*, the Court ultimately upheld the Voting Rights Act of 1965 and rejected South Carolina's argument that states possessed the right to exercise control over local elections, including by imposing literacy tests. The Court deemed the Voting Rights Act constitutional because the 15th Amendment gave Congress power to prevent racial discrimination (especially against African Americans). Through *Harper* and *Katzenbach*, the U.S. Court system was able to take major steps in establishing universal suffrage rights regardless of economic status or race.

In some cases, however, change was not brought about by a positive court decision but by the way citizens responded to a negative one. For example, the women's suffrage movement, under the leadership of Susan B. Anthony and Elizabeth Cady Stanton, had initially aimed to pass reform legislation or implement a change to an existing law. The 1874 U.S. Supreme Court case *Minor v. Happersett* marked a turning point. In that case, the Chief Justice declared that the 14th Amendment did not define the privileges and immunities of citizenship, and therefore Missouri's law preventing women from voting was constitutional. At that point, the suffrage movement strategy shifted into advocating for women's suffrage rights through individual state laws or a separate and entirely new amendment to the U.S. Constitution. Leading up to the 19th Amendment, organizations such as the National American Woman Suffrage Association undertook campaigns for the enfranchisement of women in individual states. Another more radical group, the National Woman's Party, picketed the White House in an effort to convince Congress to support the Amendment. The ratification of the 19th Amendment in 1920 represented the most significant victory of the Progressive Era.

Another case, *Elk v. Wilkins* in 1884, involved the citizenship status of Native Americans. John Elk, a man of the Winnebago Tribe who was born on a Native American Reserve but gave up his tribal affiliation to live among whites, was denied the right to vote by Charles Wilkins. The Supreme Court declared that although he was an individual born in United States territory, he was not considered a citizen since his allegiance belonged to his tribe; he had never been naturalized as an American citizen, and the 14th Amendment did nothing to change this required process. Although dissatisfied, Native Americans continued to seek recognition as full citizens. When World War I began in 1914, thousands of Native Americans took the opportunity to fight with the U.S. military. In 1924, the United States enacted the Indian Citizenship Act, granting American-born Natives citizenship in recognition of their service.

In my opinion, the greatest obstacle to universal suffrage today is one that can best be solved by citizen engagement: low youth turnout. In an attempt to survive the harsh competition of the modern world, young adults have the hardest time finding the time and interest to vote. In fact, research has shown that during the year in which 18 year-olds had first acquired the right to vote in 1972, 55 percent 18 to 29-year-olds in contrast to the demurring 16 percent of younger voters in 2014, demonstrating that the percentage of younger people who vote has been declining dramatically with time. According to Sunshine Hillygus, a political scientist at Duke, high school civic classes do not prepare students enough for the voting process nor do they emphasize the importance of voting, so students do not tend to prioritize it in comparison to the need to obtain high grades in their classes. An idea I want to remind many students is that voting may seem trivial; however, the right to vote gives us the power to determine our leaders and the opportunity to incorporate our own aspirations to create a better world. Increasing awareness of current political issues, especially during school, is the first step to furthering interest. "One of the penalties for refusing to participate in politics," Plato reminds us, "is that you end up being governed by your inferiors." I hope this line serves as a lesson that throughout the history of all these cases, those who educate themselves about injustices, involve themselves in them, and advocate for themselves are the only ones who can bring forth change.

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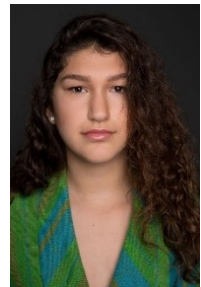


Elinor Amir-Lobel
La Jolla Country Day School – 11th Grade

From Anti-Discrimination to Equal Access: The Right to Vote for All

“Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.” – Justice Ginsburg

At the heart of democracy lies voting. 2020 not only brings milestone anniversaries of the 15th and 19th Amendments, but it is also an election year with monumental stakes. With the nation facing a colossal health and economic crisis, the issues that we are voting on will fundamentally determine our nation’s future. This election season therefore presents an opportunity and duty to achieve the goal of the amendments: true equality. A substantive approach pierces the veil of formality and considers the actual effects of facially neutral rules.



It’s been a long road for voting rights. At the country’s founding, most citizens were excluded from voting, because of race, gender, religion, property, and tax requirements. By the 1860s, the right to vote expanded to most white men but the exclusion of women and people of color persisted. In 1870, the 15th Amendment brought hope that every citizen regardless of race will have the right to vote. Yet, many states implemented voting barriers, including literary tests and poll taxes, effectively excluding black voters. Moreover, in 1884 the Supreme Court upheld the disenfranchisement of Native Americans, narrowly defining citizenship. Indeed, only in 2019 did the Ninth Circuit hold that Guam’s restricting voting to “Native Inhabitants of Guam” violated the 15th Amendment by using ancestry as a proxy for race, ruling that courts should “err on the side of inclusiveness” when interpreting the Amendment.

The 15th Amendment also offered no protection to women and, ironically, the Court relied on the 15th Amendment to narrow the scope of the 14th Amendment Equal Protection Clause. In *Minor v. Happersett*, the Court held that women were not entitled to the right to vote, reasoning “if suffrage was one of these privileges or immunities [of the 14th Amendment], why amend the Constitution to prevent its being denied on account of race?”

In 1920, the 19th Amendment directly overruled *Minor* by declaring that the right to vote shall not be denied “on account of sex”. Still, for decades after the passage of the 19th Amendment, *Minor* was relied upon by courts in upholding other voting restrictions. It was only decades later that the Supreme Court began applying the 14th Amendment to voting rights. In 1963, in *Gray v. Sanders*, Justice Douglas, finding that the separation of voters into different classes was a violation of the 14th Amendment wrote that “the concept of political equality...can mean only one thing— one person, one vote”. This robust interpretation of the 14th Amendment is significant because both the 15th and the 19th Amendments, like many of our constitutional rights, are phrased in the negative: they do not provide positive equality but bar discrimination. To reach full equality, the best judicial and legislative decisions have strived develop a robust, integrated vision of equality.

For decades, courts were reluctant to adopt such a vision. For example, *Breedlove v. Suttles*, upheld the constitutionality of poll taxes. The 1960s brought a sea of change. The 24th Amendment was ratified, prohibiting poll taxes in federal elections. In *Reynolds v. Sims*, striking down Alabama's apportionment scheme, giving rural votes disproportionate voting power, Chief Justice Warren wrote, "legislators represent people, not trees or acres".⁵ A year later, in *Harper v. Virginia Board of Elections*, the Court held that poll tax in state elections is also unconstitutional. The court explained that when interpreting the 15th Amendment, it will apply the highest standard of review – strict scrutiny – because the right to vote "is preservative of other basic civil and political rights."⁶ In 1965, the Voting Rights Act established sweeping protections, including preclearance requirements, giving federal courts the power to oversee changes in voting requirements to protect minorities. A year later, *South Carolina v. Katzenbach* upheld its constitutionality. Chief Justice Warren wrote, "after enduring nearly a century of widespread resistance of the Fifteenth Amendment, Congress has marshalled an array of potent weapons against the evil."

In subsequent cases, the Court continued to protect of the Act. However, in 2013 *Shelby County v. Holder*, the Court struck down the Act's preclearance sections, reasoning that data about voting discrimination was outdated. Justice Ginsburg's dissent insightfully integrates the five voting rights constitutional amendments: "Each of these Amendments contains the same broad empowerment of Congress to enact 'appropriate legislation' to enforce the protected right." Indeed, the five amendments provide powerful safeguards. However, the milestones anniversaries also reveal new forms of disenfranchisement.

Shelby made it easier for states to change their voting systems and requirements in ways that suppress minority voting. Voting locations were reduced in some states, leading to lower voter turnout and disparately impacting Blacks and Hispanics. ID requirements and shorter mail-in ballots have also made it harder for non-English speaker, immigrants, the elderly, and the poor to vote. Several states have recently reformed their voting laws to increase participation. Colorado's Voter Access and Modernized Elections Act mandates sending mail ballots to every registered voter, eliminates assigned polling places, reduces gerrymandering, and shortens state residency requirements for voter registration. Maryland, Michigan and Nevada simplified their voter registration. Florida recently restored voting rights to 1.4 million former felons, over one third of them African-American.

Courts and legislators must continue to actively seek ways to make the formal right to vote a reality to all. In April 2020, the Supreme Court upheld Wisconsin's decision to hold elections during the coronavirus pandemic without extending the timeline for absentee ballots, effectively disenfranchising thousands who cannot vote for safety issues. The majority opinion relies on recent caselaw that has refrained from intervening in election rules. Yet, now more than ever, courts should take an active role in guarding our constitutional rights to voting equality. Transcending political lines, the principles the courts should follow are substantive voting equality and the participation of all citizens.

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Honorable Mention

Victoria Dinov
Rancho Bernardo High School – 12th Grade
America's Democratic Promise

In 1787, 55 men gathered in Philadelphia to draft the third article of the Constitution. Anchoring their arguments on the principle of checks and balances, these men outlined the backbone of our judiciary system. In 1789, the United States Senate introduced its first bill: the Judiciary Act of 1789- establishing federal court system guidelines ("Creating the United States"). Since then, our judicial branch has served the American people by setting the standards of law protecting people's fundamental rights. One of these rights, the right to exercise one's democratic voice through voting, is one of the most valued and at the same time one of the most contested rights. As the 15th and 19th amendments have passed, it has become more crucial than ever for the judiciary branch to preserve the right to vote for all people and continue to hack away at the thick roots of structural inequalities.

Despite the judicial branch's ultimate objective of fully enabling people to exercise their Constitutional rights, this has not always been the case. From the beginning of the court system, the rights of many have been abridged. With the passing of the 15th amendment, granting the right to vote to all male citizens, informal and formal barriers arose as a response to the flooding of minority voters. From the Ku Klux Klan to the grandfather clauses, literacy tests, and poll taxes, many American citizens found themselves disenfranchised and continuing the fight to vote. In 1884, *Elk v. Wilkins* ruled that the 14th amendment does not protect Native Americans' right to vote because they were not automatic citizens at birth ("*Elk v. Wilkins*"). In *Minor v. Happersett* (1874), the judicial court upheld state decisions that ruled against female suffrage ("*Minor v. Happersett*"). These two cases illuminated the continuing struggle to uphold the 15th amendment and to create all-encompassing voting liberties.

A new era of political participation came with the passage of the 19th amendment, giving women the right to vote. Voter turnout skyrocketed and in 1960, 62.8% of the population turned out to vote, electing John F. Kennedy ("National General Election VEP Turnout Rates"). This uptick continued into 1966 in *Harper v. Virginia Board of Elections*, where the court eliminated poll taxes ("*Harper v. Virginia Board of Elections*"). Another major win came with the Voting Rights Act of 1965, prohibiting racial discrimination in the voting process. Shortly thereafter, *South Carolina v. Katzenbach* upheld the constitutionality of the Voting Rights Act ("*South Carolina v. Katzenbach*"). In more recent years, voting rights have continued to expand through acts such as Colorado's Voter Access and Modernized Election Act of 2013, which mails ballots to registered voters, eliminates assigned polling places, and shortens state residency requirements for voter registration ("HB13-1303: Voter Access & Modernized Elections Act"), and Florida's Voting Rights Restoration for Felons Initiative of 2018, which restores voting rights to those with prior felony convictions ("Amendment 4").

Yet, as voting has become a beacon of democratic participation, the ghosts of the past have recently resurfaced to curtail the advancements in voter rights. In a study conducted by the PRRI, 9% of both black and Hispanic respondents indicated that they "lacked the proper identification to vote." A reported 15% of black respondents also revealed that they "had trouble finding polling places on Election Day." Even more astounding was the finding that 10% of black respondents and 11% of Hispanic respondents "were incorrectly told that they weren't listed on voter rolls" (Newkirk).

In addition to many of these informal barriers, the formal barriers have gone even further to hinder the progress in inclusive democratic participation. In Texas, a new voter-ID law mandated that voters must present a government-issued ID at polling stations. This new law has massively blocked minority voters, who are more likely to lack this form of identification and the funds to obtain the underlying documents required to acquire a state voting ID (Soloman). In *Shelby County v. Holder*, Section 5 of the Voting Rights Act was eviscerated by "declaring the formula

used to determine covered jurisdictions” as unconstitutional, thus obliterating the idea of protecting from unlawful voting changes. North Dakota further gutted the Voting Rights Act by adopting laws that required voters to present an ID with a valid residential street address. This barred 1 in 5 eligible Native Americans from voting as many lived on reservations with no street addresses. Even in these last two years, voter purges have been constitutionally validated as in the case of *Husted v. A. Philip Randolph Institute*, which permitted Ohio to remove eligible Americans off their voter rolls if they did not confirm their voter registration or failed vote for 4 years post-notice (Soloman).

As new voter suppression tactics continue to arise, reaffirming and modifying American’s voting rights become integral in protecting the essential fabric of our system. With the recent pulverization of Section five of the Voting Rights Act through *Shelby County v. Holder*, we must remember and reestablish the initial intention of this provision- to protect voters from unconstitutional voting changes. This voter protection should also extend to people of color by ratifying new laws preventing racial discrimination at the polls. This would safeguard people’s rights as ploys such as the voter ID laws in Texas would become eliminated. Building on the Equal Protection Clause of the 14th amendment, state policymakers should also repeal all felony disenfranchisement, modern-day poll taxes, unnecessary poll closures, and discriminatory voter purge policies. Lastly, those with limited English proficiency should be provided with multilingual voting materials to protect their democratic voices.

The legal and policy advancements made since the passing of the 15th and 19th amendments have been revolutionary in establishing legal voter protections. However, in a time when the rights of Americans are once again placed in jeopardy by lawmakers, tactics to obstruct voter rights must be squashed before becoming a snowball effect of voter suppression. It is crucial that our governmental institutions, specifically the judicial branch, live up to our nation’s commitment to fundamental rights and fulfill America’s democratic promise.

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Video Contest Winners

First Place



Jeremy Byrd – Poway High School – 10th Grade

Taylor Rickert – Foothills Christian High School – 11th Grade



Second Place



Angel Zepeda – San Ysidro High School – 12th Grade

